

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 26, 2001

IN RE:)	
)	
SECOND COMPLAINT OF DISCOUNT)	DOCKET NO.
COMMUNICATIONS AGAINST BELL SOUTH)	00-01151
TELECOMMUNICATIONS, INC.)	

**ORDER GRANTING CONSUMER ADVOCATE'S PETITION TO INTERVENE
AND SETTING FILING SCHEDULE AND STATUS CONFERENCE**

This matter came before the Hearing Officer following action by the Directors of the Tennessee Regulatory Authority ("Authority") appointing General Counsel or his designee as the Hearing Officer on the merits of the *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.* ("Second Complaint").¹

I. Background

On December 29, 2000, Discount Communications ("Discount") filed its Second Complaint against BellSouth Telecommunications, Inc. ("BellSouth"), stating that the Second Complaint was being filed in response to an Order of the United States Bankruptcy Court for the Western District of Tennessee. The Court's Order "directed Discount to file by the end of the year 'a formal complaint with the [Authority] asserting any and all unresolved billing disputes which are 'subject to the jurisdiction of the [Authority].'"²

¹ See, *Order Holding in Abeyance Discount Communications' Motion to Continue Service and Appointing Hearing Officer on the Merits* entered by the Authority on January 12, 2001.

² *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.* (December 29, 2000) p. 2.

On January 5, 2001, Discount filed a Motion to Continue Service which stated that on January 3, 2001, Judge William Houston Brown of the U.S. Bankruptcy Court had orally announced that he would lift the automatic stay which prevented BellSouth from terminating service to Discount. According to the Motion to Continue Service, the Court's decision would not become effective for ten (10) days thereby permitting the parties to return to the Authority "so that the agency could decide what further action, if any, to take regarding the billing issues raised by Discount."³

Based upon the situation as presented by Discount, the Authority considered this matter under Miscellaneous Business at its Authority Conference on January 9, 2001. When the parties appeared before the Directors to discuss Discount's Motion to Continue Service, BellSouth argued that it had not received sufficient notice to address the Motion at the Conference. Nevertheless, the parties agreed that the Bankruptcy Court's decision would not become effective until ten (10) days after the date of the Court's issuance of a written order and that a proposed order had not been presented to the Bankruptcy Court. Based upon the representation by the parties that the Court's decision to lift the automatic stay would not become effective until ten (10) days after entry of a *written* order, the Directors voted unanimously to hold the Motion to Continue Service in abeyance. BellSouth stated that it would file a response to Discount's Motion by January 12, 2001. The Directors also voted unanimously to appoint General Counsel or his designee to act as Hearing Officer to handle the case procedurally and to render an initial decision on the merits of the Second Complaint.⁴

³ *Motion of Discount Communications to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* (January 5, 2001), p. 1.

⁴ *Order Holding in Abeyance Discount Communications' Motion to Continue Service and Appointing Hearing Officer on the Merits*, (January 12, 2001).

On January 11, 2001, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter (“Consumer Advocate”) filed a *Petition to Intervene*. The Consumer Advocate bases its request for intervention on the assertion that “consumers may be affected by actions taken in this docket, particularly if actions taken in this docket by [BellSouth] result in or lead to termination of service to customers of [Discount].”⁵ The Consumer Advocate explained that “...if [telecommunications] service is terminated, the Attorney General wants to ensure that there is as little disruption as possible in service for [Discount] customers and that such customers not forfeit any money that they have pre-paid for service.”⁶

On January 11, 2001, BellSouth and Discount entered into an agreement extending the time period for BellSouth to respond to Discount’s Motion to Continue Service until after the entry of an order from the Bankruptcy Court. The Hearing Officer approved this agreement. On January 22, 2001, Judge Brown of the United States Bankruptcy Court entered a written order which stated:

In light of the court’s finding, the court further finds that cause exists to completely lift the automatic stay pursuant to 11 U.S.C. § 362 with respect to BellSouth and to restore BellSouth to all of its pre-petition rights and the stay is hereby lifted. BellSouth and [Discount] are free to exercise whatever rights they deem appropriate before the Tennessee Regulatory Authority.

The court further finds that the lifting of the automatic stay pursuant to this order will not be effective until ten (10) days after entry of this order. Pending any appeal of this order, [Discount] may continue escrowing payments of \$2500 per day in accordance with this court’s order of November 30, 2000 provided further that nothing in this order shall be deemed to require BellSouth to accept future payments from [Discount] or shall be deemed a waiver of BellSouth’s rights in the event such payments are accepted.⁷

⁵ *Petition to Intervene* (January 11, 2001), p. 1.

⁶ *Id.* at 2-3.

⁷ *In re ATM Discount Communications, Inc.*, Case No. 00-33928-B, Order Denying Debtor’s Motion to Assume or Reject Executory Contract and Granting Motion to Lift Automatic Stay (filed Jan. 22, 2001), pp. 1-2.

A copy of the U.S. Bankruptcy Court's Order of January 22, 2001 is attached to this Order as Exhibit A.

As a result of the issuance of the Bankruptcy Court's Order, the Hearing Officer, contacted the parties and the Consumer Advocate and scheduled a meeting to discuss further action in the case. The meeting was set to take place after the Authority's January 23, 2001 Conference. During the January 23rd Conference the Pre-Hearing Officer provided a report to the Directors regarding the status of the case, specifically addressing the filing of the Bankruptcy Court's Order and purpose of the scheduled meeting with the parties and the Consumer Advocate.

II. January 23, 2001 Meeting

On January 23, 2001, after the Authority Conference was adjourned, the parties and the Consumer Advocate met with the Hearing Officer. Counsel in attendance were:

BellSouth Telecommunication, Inc. - **Guy Hicks**, Esquire, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300;

Discount Communications, Inc. - **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062;

Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter - **Vance L. Broemel**, Esquire, Cordell Hull Building, 2nd Floor, 425 5th Avenue North, Nashville, TN 37243.

Based on the filings of the parties and the Consumer Advocate and the discussions during the January 23, 2001 meeting, the Hearing Officer made the following determinations:

1. Filing Dates

The Hearing Officer established and the parties agreed to the following dates for filing of responses: 1) BellSouth will file its response to Discount's Motion to Continue Service no later

than **Friday, January 26, 2001**; 2) BellSouth will file its response to the Second Complaint no later than **Monday, January 29, 2001**.

2. Status Conference

The Hearing Officer set a Status Conference to take place at **1:30 p.m. on Wednesday, January 31, 2001** for the purposes of discussing the state of the pleadings, order of the Bankruptcy Court and Discount's Motion to Continue Service.

3. Escrow Account

Discount confirmed that it is continuing to deposit \$2500 a day in the escrow account established pursuant to the December 4, 2000 Order of the Bankruptcy Court. The Hearing Officer discussed with the parties whether the payment of \$2500 per day by Discount into the escrow account meets the daily expenses of BellSouth as to Discount's account. BellSouth stated that the \$2500 per day payment was not sufficient to meet its current expenses relating to Discount's business based upon a current invoice to Discount. The amount of the deficiency claimed by BellSouth was disputed by Discount. BellSouth indicated that it would be raising the issue of the daily escrow deposit amount in its response to Discount's Motion to Continue Service. The Hearing Officer encouraged the parties to work together to reach an agreement on this issue prior to the next status conference. The Hearing Officer will address the issue of establishing an escrow account in this docket at the Status Conference on January 31, 2001. BellSouth agreed that it will not take action to terminate service to Discount until after it gives notice to the Authority so that the issues involved in continuing service to Discount customers can be resolved prior to termination of service.

III. The Consumer Advocate's Petition to Intervene

During the January 23, 2001 meeting the Consumer Advocate stated that it seeks intervention in this docket primarily to address matters that could arise in the event of termination of service to Discount by BellSouth. BellSouth stated during the meeting that it did not object to granting the Consumer Advocate's petition provided that intervention is limited to the issue addressing the treatment of Discount's customers in the event of termination of service. The Consumer Advocate responded that it wants to participate in the Hearing beyond the issue of the treatment of customer's issue so that it is able to address other issues that may arise in the course of this proceeding.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
 - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and
 - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

The Hearing Officer finds that the Consumer Advocate's Petition is timely filed and has been properly served; substantiates that the legal interests of the intervenor may be determined in this matter; and demonstrates that the interests of justice and the orderly and prompt conduct of this matter would not be impaired by allowing the intervention.

Based on the foregoing, the Consumer Advocate's Petition to Intervene is granted to permit the Consumer Advocate to act to protect the interests of Discount's customers in the event that BellSouth terminates Discount's service. The Hearing Officer sees no reason to expressly limit the Consumer Advocate's participation in the proceeding other than to adopt the Consumer Advocate's stated position that it has no specific issues to raise regarding the billing dispute between BellSouth and Discount as set forth in the Second Complaint.

IT IS THEREFORE ORDERED THAT:


1. BellSouth Telecommunications Inc. shall file its response to the *Motion of Discount Communications to Require BellSouth Telecommunications, Inc. to Continue Service Pending Resolution of this Proceeding* no later than **Friday, January 26, 2001 at 4:30 p.m.**

2. BellSouth Telecommunications Inc. shall file its response to the *Second Complaint of Discount Communications Against BellSouth Telecommunications, Inc.* no later than **Monday, January 29, 2001 at 4:30 p.m.**

3. A Status Conference for the purposes stated herein will be held in the Hearing Room of the offices of the Tennessee Regulatory Authority at **1:30 p.m. on Wednesday, January 31, 2001.**


4. The Petition to Intervene filed by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter is granted to permit it to act to protect the interests of Discount Communications' customers in the event that service to Discount Communications is terminated by BellSouth Telecommunications, Inc. The Consumer Advocate

may participate in the proceeding as its interests may appear and receive copies of any notices, orders or other documents herein.



J. RICHARD COLLIER ACTING AS
HEARING OFFICER

ATTEST:



K. David Waddell, Executive Secretary

UNITED STATES BANKRUPTCY COURT
WESTERN DIVISION
FILED

JAN 22 2001

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISIONJED G. WEINTRAUB
CLERK OF COURT

In re:

ATM DISCOUNT COMMUNICATIONS, INC.

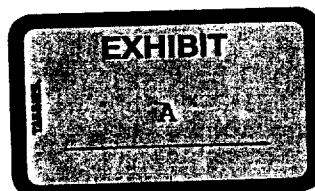
Case No. 00-33928-B

Debtor.

Chapter 11

**ORDER DENYING DEBTOR'S MOTION TO
ASSUME OR REJECT EXECUTORY CONTRACT AND
GRANTING MOTION TO LIFT AUTOMATIC STAY**


This matter came to be heard on January 4, 2001, upon the motion of the Debtor ATM Discount Communications, Inc. to assume an executory contract dated March 13, 1998, by and between Discount Communications and BellSouth Telecommunications, Inc. ("BellSouth"), and the objection of BellSouth thereto, and upon BellSouth's motion to lift automatic stay. Upon statement of counsel for the parties, and upon the entire record in this cause, the court made oral findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 which are incorporated herein by reference. Based on the record before the court, the court finds that the Debtor, ATM Discount Communications, Inc., is not a party to the contract between Discount Communications, a sole proprietorship owned by Ed Hayes, and BellSouth. Accordingly, the court finds that no executory contract exists between the Debtor and BellSouth and accordingly, the Debtor's motion to assume the executory contract should be and is hereby denied. In light of the court's finding, the court further finds that cause exists to completely lift the automatic stay pursuant to 11 U.S.C. § 362 with respect to BellSouth and to restore BellSouth to all of its pre-petition rights and the stay is hereby lifted. BellSouth and the Debtor are free to exercise whatever rights they deem appropriate before the Tennessee Regulatory Authority.



ATM DISCOUNT COMMUNICATIONS INC. Case No. 00-33928-B
ORDER DENYING DEBTOR'S MOTION TO
ASSUME OR REJECT EXECUTORY CONTRACT AND
GRANTING MOTION TO LIFT AUTOMATIC STAY

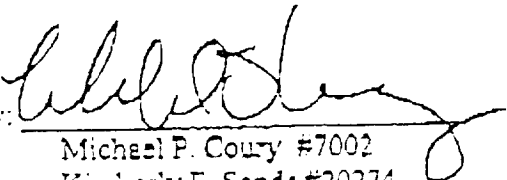
The court further finds that the lifting of the automatic stay pursuant to this order will not be effective until ten (10) days after entry of this order. Pending any appeal of this order, the Debtor may continue escrowing payments of \$2500 per day in accordance with this court's order of November 30, 2000 provided further that nothing in this order shall be deemed to require BellSouth to accept future payments from this Debtor or shall be deemed a waiver of BellSouth's rights in the event such payments are accepted. Pending further order of the court, the \$50,000 security deposit paid to BellSouth pursuant to this court's order of November 30, 2000 shall be retained by BellSouth.

IT IS SO ORDERED.


WILLIAM HOUSTON BROWN
UNITED STATES BANKRUPTCY JUDGE
DATED: JANUARY 22 2001

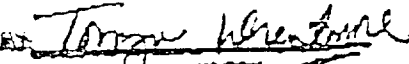
APPROVED:

WARING COX PLC

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
A TRUE COPY ATTEST
JED G. WENTRAUB
CLERK OF COURT

JAN 22 2001


JED G. WENTRAUB
CLERK OF COURT

ATM DISCOUNT COMMUNICATIONS INC.>Case No. 00-33928-B
ORDER DENYING DEBTOR'S MOTION TO
ASSUME OR REJECT EXECUTORY CONTRACT AND
GRANTING MOTION TO LIFT AUTOMATIC STAY

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